

County of Bernalillo Testimony
Presented by Chairman E. Tim Cummins to the
United States Committees on Energy and Natural Resources
and Indian Affairs

April 24, 2002

Chairman Bingaman and Senators:

We are deeply grateful for the opportunity you have given the County of Bernalillo to appear before this Senate Committee on an issue that is so vitally important to all residents of our community. The area claimed by the Sandia Pueblo sits on the east edge of the County of Bernalillo within which lies the City of Albuquerque, the largest city in the State of New Mexico. The Claim Area runs from the east edge of the County of Bernalillo at a 5000-foot elevation all the way to the top of the Sandia Mountain at a 10,000-foot elevation.

The area claimed by the Sandia Pueblo has been used by Native American and non-Native Americans as a place for spiritual solace, residential living, recreation, and many other uses for many years. The County of Bernalillo, the Sandia Mountain Coalition, and the Pueblo agree that there should be preservation of the land, access by the Pueblo for traditional and cultural purposes, no new commercial development of National Forest lands within the Claim Area, permanence of the agreements, an end to litigation, and presentation of these shared goals to you.

The County itself has consistently sought final settlement of the Sandia Pueblo claims to title of the area, be they past, present or future; equal rights to the public for access, recreational use and management of the forest; maintenance of the character of the area; confirmation in perpetuity of public right-of-way, roads and easements, including access easements to accommodate future utility and communication technology; a guarantee of clear title to subdivision homeowners and subdivision landowners, and recognition of County authority over subdivisions within the area such as zoning, public safety including police and fire services, environmental issues including water and wastewater, and taxation.

However, the County of Bernalillo and the Pueblo of Sandia differ on the means to the end and differ on the language to be used in the documents to affect these goals.

With regard to Senate Bill 2018, the County of Bernalillo recognizes it as an attempt to further close the gap that still exists between the County and Sandia Pueblo with regard to total settlement of the issues regarding equitable use of the Claim Area by all parties. This issue has been discussed and debated since 1988 and we now have the opportunity to settle the issues with permanence.

Although Senate Bill 2018 contains many items that the County of Bernalillo has requested and agreed to, there are still some issues that we feel are necessary to make the legislation work with permanence. By permanence, we mean without resort to the courts:

1) The veto power over new uses by the County of Bernalillo unilaterally, the County of Sandoval unilaterally, or Sandia Pueblo unilaterally is of great concern to us. Any of these three (3) parties can veto a

new use by themselves. There is no further discussion or appeal process. Is a handicapped ramp a new use? Is a new trail a “new” use? (p. 7, Sec. 5(a)(3)).

2) The County of Bernalillo feels strongly that the Settlement Agreement and the Management Act be “decoupled” from the legislation. Let me explain this.

Whenever the County of Bernalillo, the City of Albuquerque, the Sandia Mountain Coalition, and the Pueblo sat together in the final days of our mediation efforts, we all agreed on the issues. However, when the agreed-to resolutions of issues were placed on paper, the County of Bernalillo, the City of Albuquerque, and the Sandia Coalition could not agree to the language due to obvious ambiguities in the language that still existed. We, in effect, would just be turning over the Claim Area in fee simple to the Pueblo of Sandia in future years with that language. The Pueblo would not change any of the language which left us no alternative but to leave the mediation. That language still has not changed in the Settlement Agreement and the Management Act. We think the legislation presented here should control.

Some examples of this are:

a) The use of the word “Trust” without definition. (Define “Trust” on page 4, Section 3 (o.))

b) Although some of the language has been changed in this legislation, there are still places where language is still not “parallel” for the public and the Sandia Pueblo. Section 4(a)(1) and 4(a)(3) on page 6 should state that we recognize and protect in perpetuity the Pueblo’s rights, interests and uses in and to the Area. Section (a)(3) should also read we recognize and protect in perpetuity the public’s longstanding rights, interests, and uses in and to the Area.

3) The Act states there is no exemption from applicable federal wildlife protection laws but an exemption to that exemption does not allow prosecution if a person exercises traditional and cultural use rights. For safety and other purposes, particularly sport hunting, how broad is this? (p. 11, Sec. 6, lines 11-25)

4) There is always complexity involved when discussing and setting criminal and civil jurisdiction. Certainly this places unwary residents in a very difficult position. The County thinks the present system of criminal jurisdiction would work best. The Sandia Pueblo should only have jurisdiction over crimes classified as misdemeanors. The Sandia Pueblo should have no jurisdiction over crimes committed by non-Native Americans. (p. 12, Sec. 7)

The County of Bernalillo, again for safety of all residents, has concerns regarding jurisdiction over sport and recreation hunting. We think that the Pueblo's regulations being "substantially similar" to those of New Mexico State Game and Fish is going to be problematic. Who will enforce these "substantially similar" regulations? (p. 14, Sec. 7(b)(3)(B)) This sport and recreational hunting Section may have to have its own separate civil and criminal jurisdiction "spelled out."

5) I believe all parties should have their attorneys fees reimbursed for working on these issues that have benefited the general public. I understand there is past precedent to do this with these types of issues.

There are other issues such as the non-applicability of new federal laws or amendments to existing federal laws that will not apply to the Claim Area (p. 7 and p. 9); the payment of money to the Pueblo should Congress ever diminish the wilderness of the Claim Area (p. 10, lines 17-25); and the withdrawal of the Leshy opinion and the vacation of Judge Greene's opinion.

It is very disturbing to the County of Bernalillo that we have been led to a resolution of these very important issues based on court decisions that were never the result of any hearing on the merits of the claim.

However, in the spirit of cooperation, we merely ask that this legislation be developed in a manner that will allow all residents of Bernalillo County, the City of Albuquerque, the Pueblo of Sandia, and other jurisdictions, permanent and equal access to the Claim Area for each of their legitimate purposes. This will allow all of us to live in harmony as we have for so many years.